

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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Daniale Holmes,

File No. 19-cv-2291 (ECT/LIB)

Plaintiff,

v.

**ORDER ACCEPTING REPORT  
AND RECOMMENDATION**

U.S. Department of Education Default  
Resolution Group, U.S. Department of  
Education Federal Student Aid, Rashaad  
William, and Erika Killingsworth,

Defendants.

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This case is before the Court on a Report and Recommendation issued by Magistrate Judge Leo I. Brisbois. ECF No. 5. Magistrate Judge Brisbois recommends dismissing this action without prejudice for failure to prosecute. *Id.* at 3. Within the time period for filing objections, Plaintiff Daniale Holmes filed a letter requesting that the Court refrain from dismissing the case because she wishes to continue with her lawsuit. ECF No. 6. This letter will be construed as an objection. Because Holmes has objected, the Court is required to review the Report and Recommendation de novo pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 72.2(b)(3). The Court has undertaken that de novo review and has concluded that Magistrate Judge Brisbois' analysis and conclusions are correct.

Holmes filed her complaint on August 19, 2019, alleging that her daughter fraudulently used her name on financial aid paperwork for a school that is now defunct without her knowledge or permission and that her tax refund was subsequently garnished to recover outstanding student loan payments. ECF No. 1. Holmes also filed an application

to proceed in forma pauperis (“IFP application”). ECF No. 2. Magistrate Judge Brisbois reviewed Holmes’s IFP application and issued an order on October 15, 2019, in which he noted several deficiencies in both her IFP application and her complaint. *See* Order [ECF No. 3]. Specifically, Magistrate Judge Brisbois concluded that Holmes “failed to provide comprehensive information about her wages” and “left several portions of the IFP application blank.” *Id.* at 2. Magistrate Judge Brisbois also determined that her complaint did not satisfy the requisite pleading standards because she had not established a basis for subject-matter jurisdiction, had not explained how several of the named Defendants were related to the complaint, and had not made a clear and specific demand for relief. *Id.* at 3. Holmes was directed to submit a complete IFP application and an amended complaint within 30 days. *Id.* at 3–4. The order warned Holmes that if she failed to comply, Magistrate Judge Brisbois would recommend that the action be dismissed without prejudice for failure to prosecute. *Id.* at 4.

Holmes filed a new IFP application within the directed time period. ECF No. 4. Although her new IFP application demonstrates that she would qualify financially to proceed under that status, an action must nonetheless be dismissed if an IFP applicant has filed a complaint that fails to state a claim on which relief may be granted. *See* 28 U.S.C. § 1915(e)(2)(B)(ii). The deadline to amend her complaint has now long since passed, and Holmes has not filed an amended pleading. Therefore, the deficiencies in her complaint remain. Holmes does not explain in her letter why she has not filed an amended complaint. Attached to Holmes’s letter are documents related to government benefits she receives and a letter from the U.S. Department of Education concerning a borrower defense application

she has filed with Department, presumably related to the circumstances underlying this action, but these documents do not cure the deficiencies in her complaint.

Therefore, based upon all of the files, records, and proceedings in the above-captioned matter, **IT IS ORDERED THAT:**

1. Plaintiff's Objection to the Report and Recommendation [ECF No. 6] is **OVERRULED;**

2. The Report and Recommendation [ECF No. 5] is **ACCEPTED** in full;

3. The action is **DISMISSED WITHOUT PREJUDICE** pursuant to Federal Rule of Civil Procedure 41(b) for failure to prosecute; and

4. Plaintiff's original Application to Proceed in District Court without Prepaying Fees or Costs [ECF No. 2] and her amended Application to Proceed in District Court without Prepaying Fees or Costs [ECF No. 4] are **DENIED AS MOOT.**

**LET JUDGMENT BE ENTERED ACCORDINGLY.**

Dated: February 18, 2020

s/ Eric C. Tostrud  
Eric C. Tostrud  
United States District Court